

Superseded 5/13/2014

10-2-125 Incorporation of a town -- Petition.

(1) As used in this section:

- (a) "Assessed value," with respect to agricultural land, means the value at which the land would be assessed without regard to a valuation for agricultural use under Section 59-2-503.
- (b) "Financial feasibility study" means a study described in Subsection (8).
- (c) "Feasibility consultant" means a person or firm:
 - (i) with expertise in the processes and economics of local government; and
 - (ii) who is independent of and not affiliated with a county or sponsor of a petition to incorporate.
- (d) "Municipal service" means a publicly provided service that is not provided on a countywide basis.
- (e) "Nonurban" means having a residential density of less than one unit per acre.

(2)

- (a)
 - (i) A contiguous area of a county not within a municipality, with a population of at least 100 but less than 1,000, may incorporate as a town as provided in this section.
 - (ii) An area within a county of the first class is not contiguous for purposes of Subsection (2)(a)
 - (i) if:
 - (A) the area includes a strip of land that connects geographically separate areas; and
 - (B) the distance between the geographically separate areas is greater than the average width of the strip of land connecting the geographically separate areas.
- (b) The population figure under Subsection (2)(a) shall be determined:
 - (i) as of the date the incorporation petition is filed; and
 - (ii) by the Utah Population Estimates Committee within 20 days after the county clerk's certification under Subsection (6) of a petition filed under Subsection (4).

(3)

- (a) The process to incorporate an area as a town is initiated by filing a petition to incorporate the area as a town with the clerk of the county in which the area is located.
- (b) A petition under Subsection (3)(a) shall:
 - (i) be signed by:
 - (A) the owners of private real property that:
 - (I) is located within the area proposed to be incorporated; and
 - (II) is equal in assessed value to more than 1/5 of the assessed value of all private real property within the area; and
 - (B) 1/5 of all registered voters within the area proposed to be incorporated as a town, according to the official voter registration list maintained by the county on the date the petition is filed;
 - (ii) designate as sponsors at least five of the property owners who have signed the petition, one of whom shall be designated as the contact sponsor, with the mailing address of each owner signing as a sponsor;
 - (iii) be accompanied by and circulated with an accurate map or plat, prepared by a licensed surveyor, showing a legal description of the boundary of the proposed town; and
 - (iv) substantially comply with and be circulated in the following form: PETITION FOR INCORPORATION OF (insert the proposed name of the proposed town)

To the Honorable County Legislative Body of (insert the name of the county in which the proposed town is located) County, Utah:

We, the undersigned owners of real property and registered voters within the area described in this petition, respectfully petition the county legislative body to submit to the

registered voters residing within the area described in this petition, at the next regular general election, the question of whether the area should incorporate as a town. Each of the undersigned affirms that each has personally signed this petition and is an owner of real property or a registered voter residing within the described area, and that the current residence address of each is correctly written after the signer's name. The area proposed to be incorporated as a town is described as follows: (insert an accurate description of the area proposed to be incorporated).

- (c) A petition under this Subsection (3) may not describe an area that includes some or all of an area proposed for annexation in an annexation petition under Section 10-2-403 that:
 - (i) was filed before the filing of the petition; and
 - (ii) is still pending on the date the petition is filed.
- (d) A petition may not be filed under this section if the private real property owned by the petition sponsors, designated under Subsection (3)(b)(ii), cumulatively exceeds 40% of the total private land area within the area proposed to be incorporated as a town.
- (e) A signer of a petition under this Subsection (3) may withdraw or, after withdrawn, reinstate the signer's signature on the petition:
 - (i) at any time until the county clerk certifies the petition under Subsection (5); and
 - (ii) by filing a signed, written withdrawal or reinstatement with the county clerk.
- (4)
 - (a) If a petition is filed under Subsection (3)(a) proposing to incorporate as a town an area located within a county of the first class, the county clerk shall deliver written notice of the proposed incorporation:
 - (i) to each owner of private real property owning more than 1% of the assessed value of all private real property within the area proposed to be incorporated as a town; and
 - (ii) within seven calendar days after the date on which the petition is filed.
 - (b) A private real property owner described in Subsection (4)(a)(i) may exclude all or part of the owner's property from the area proposed to be incorporated as a town by filing a notice of exclusion:
 - (i) with the county clerk; and
 - (ii) within 10 calendar days after receiving the clerk's notice under Subsection (4)(a).
 - (c) The county legislative body shall exclude from the area proposed to be incorporated as a town the property identified in the notice of exclusion under Subsection (4)(b) if:
 - (i) the property:
 - (A) is nonurban; and
 - (B) does not and will not require a municipal service; and
 - (ii) exclusion will not leave an unincorporated island within the proposed town.
 - (d) If the county legislative body excludes property from the area proposed to be incorporated as a town, the county legislative body shall send written notice of the exclusion to the contact sponsor within five days after the exclusion.
- (5) No later than 20 days after the filing of a petition under Subsection (3), the county clerk shall:
 - (a) with the assistance of other county officers from whom the clerk requests assistance, determine whether the petition complies with the requirements of Subsection (3); and
 - (b)
 - (i) if the clerk determines that the petition complies with those requirements:
 - (A) certify the petition and deliver the certified petition to the county legislative body; and
 - (B) mail or deliver written notification of the certification to:
 - (I) the contact sponsor;

- (II) if applicable, the chair of the planning commission of each township in which any part of the area proposed for incorporation is located; and
 - (III) the Utah Population Estimates Committee; or
 - (ii) if the clerk determines that the petition fails to comply with any of those requirements, reject the petition and notify the contact sponsor in writing of the rejection and the reasons for the rejection.
- (6)
- (a)
 - (i) A petition that is rejected under Subsection (5)(b)(ii) may be amended to correct a deficiency for which it was rejected and then refiled with the county clerk.
 - (ii) A valid signature on a petition filed under Subsection (3)(a) may be used toward fulfilling the signature requirement of Subsection (3)(b) for the same petition that is amended under Subsection (6)(a)(i) and then refiled with the county clerk.
 - (b) If a petition is amended and refiled under Subsection (6)(a)(i) after having been rejected by the county clerk under Subsection (5)(b)(ii):
 - (i) the amended petition shall be considered as a newly filed petition; and
 - (ii) the amended petition's processing priority is determined by the date on which it is refiled.
- (7)
- (a)
 - (i) The legislative body of a county with which a petition is filed under Subsection (4) and certified under Subsection (6) shall commission and pay for a financial feasibility study.
 - (ii) The feasibility consultant shall be chosen:
 - (A)
 - (I) by the contact sponsor of the incorporation petition, as described in Subsection (3)(b)(ii), with the consent of the county; or
 - (II) by the county if the contact sponsor states, in writing, that the sponsor defers selection of the feasibility consultant to the county; and
 - (B) in accordance with applicable county procurement procedure.
 - (iii) The county legislative body shall require the feasibility consultant to complete the financial feasibility study and submit written results of the study to the county legislative body no later than 30 days after the feasibility consultant is engaged to conduct the financial feasibility study.
 - (b) The financial feasibility study shall consider the:
 - (i) population and population density within the area proposed for incorporation and the surrounding area;
 - (ii) current and five-year projections of demographics and economic base in the proposed town and surrounding area, including household size and income, commercial and industrial development, and public facilities;
 - (iii) projected growth in the proposed town and in adjacent areas during the next five years;
 - (iv) subject to Subsection (7)(c), the present and five-year projections of the cost, including overhead, of governmental services in the proposed town, including:
 - (A) culinary water;
 - (B) secondary water;
 - (C) sewer;
 - (D) law enforcement;
 - (E) fire protection;
 - (F) roads and public works;
 - (G) garbage;

- (H) weeds; and
 - (I) government offices;
 - (v) assuming the same tax categories and tax rates as currently imposed by the county and all other current service providers, the present and five-year projected revenue for the proposed town; and
 - (vi) a projection of any new taxes per household that may be levied within the incorporated area within five years of incorporation.
- (c)
- (i) For purposes of Subsection (7)(b)(iv), the feasibility consultant shall assume a level and quality of governmental services to be provided to the proposed town in the future that fairly and reasonably approximate the level and quality of governmental services being provided to the proposed town at the time of the feasibility study.
 - (ii) In determining the present cost of a governmental service, the feasibility consultant shall consider:
 - (A) the amount it would cost the proposed town to provide governmental service for the first five years after incorporation; and
 - (B) the county's present and five-year projected cost of providing governmental service.
 - (iii) The costs calculated under Subsection (7)(b)(iv), shall take into account inflation and anticipated growth.
- (d) If the five year projected revenues under Subsection (7)(b)(v) exceed the five-year projected costs under Subsection (7)(b)(iv) by more than 10%, the feasibility consultant shall project and report the expected annual revenue surplus to the contact sponsor and the lieutenant governor.
- (e) The county legislative body shall approve a certified petition proposing the incorporation of a town and hold a public hearing as provided in Section 10-2-126.